

DECISION – WALPOLE ZONING BOARD OF APPEALS CASE NO. 09-17

APPLICANT

Michael A. Manzo

LOCATION OF PROPERTY INVOLVED

100 Elm Street, 125 West Street, Parcel on West Street, Parcel on Elm Street
Map/Block: 33/359; 33/15; 33/21; 33/21-1; 25/276, Zoning Districts CBD/IND

APPLICATION

Special Permits under Sections 9.6.A(2) and 9.2.C(2) of the Zoning Bylaw relative to Lots 6, 2 and 5 as shown on the submitted Plans.

On April 19, 2017, a Public Hearing was held in the Main Meeting Room of Town Hall for the purpose of receiving information and voting upon a decision as to granting of the Special Permits requested. The members who were present and voting:

Matthew Zuker, Chairman
James DeCelle, Vice Chairman
Craig Hiltz, Clerk
Mary Jane Coffey, Member

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VOTE OF THE BOARD

A motion was made by Mr. Zuker and seconded by Mr. DeCelle to grant the Special Permits requested under Sections 9.6.A(2) and 9.2.C(2) of the Zoning Bylaw to alter Lots 6, 2 and 5 as shown on the Plan presented at the public hearing to bring said Lots more in compliance with the provisions of Section 8 of the Zoning Bylaw relative to Parking Standards, with conditions.

The vote was 4-0-0 in favor (Zuker, Hiltz, DeCelle, Coffey voting); therefore, the Special Permits are hereby granted subject to the following conditions:

1. Lot No. 6 shown on the Plan may be modified by other Boards as long as the number of parking spaces is not altered from the number proposed and shown on the plan (82).

REASONS FOR DECISION

It is the finding of the Board that the Applicant was able to meet the number of necessary parking spaces at their highest demand and that the alterations brings the parking more in compliance to Parking Standards. Accordingly, the Board has determined that the Special Permits requested are warranted.

FURTHER FINDINGS

Section 2: Administration, 2. Special Permits, B. Finding and Determination required that:

(1) Prior to granting a special permit, the SPGA shall make a finding and determination that the proposed use, building, structure, sign, parking facility or other activity which is the subject of the application for the special permit:

- (a) does and shall comply with such criteria or standards as shall be set forth in the section of this Bylaw which refers to the granting of the requested special permit;**

The Board finds this condition satisfied.

- (b) shall not have vehicular and pedestrian traffic of a type and quantity so as to adversely affect the immediate neighborhood;**

The Board finds that this criterion is satisfied.

- (c) shall not have a number of residents, employees, customers, or visitors, so as to adversely affect the immediate neighborhood;**

This proposal is relative to bring the parking areas more in compliance with the Parking Standards outlined in Section 8 of the Zoning Bylaw. Thus, the Board finds that there will not be any adverse effect on the neighborhood and this condition is satisfied.

- (d) shall comply with the dimensional requirements applicable to zoning district in which the premises is located, including, without limitation, the applicable lot coverage and buffer zone requirements in Section 5-G;**

The Board finds that as shown on the plans submitted with the Application this condition is met.

- (e) shall not be dangerous to the immediate neighborhood of the premises through fire, explosion, emission of wastes, or other causes;**

The Board finds that there is nothing being used to cause any danger to the immediate neighborhood of the premises through fire, explosion, emissions of waste or other causes and this condition is satisfied.

- (f) shall not create such noise, vibration, dust, heat, smoke, fumes, odor, glare or other nuisance or serious hazard so as to adversely affect the immediate neighborhood;**

This proposal is relative to bring the parking areas more in compliance with the Parking Standards outlined in Section 8 of the Zoning Bylaw. Thus, the Board finds that this condition is satisfied.

- (g) shall not adversely affect the character of the immediate neighborhood; and**

The Board finds that this condition is satisfied.

- (h) shall not be incompatible with the purpose of the zoning Bylaw or the purpose of the zoning district in which the premises is located.**

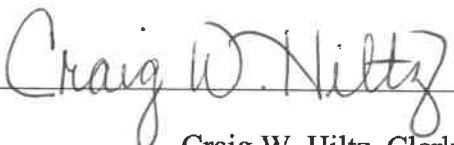
The Board finds that the purpose of the Zoning Bylaw in part states, "to encourage the most appropriate use of the land". This proposal is relative to bring the parking areas more in compliance with the Parking Standards outlined in Section 8 of the Zoning Bylaw. Thus, the Board finds that this condition is satisfied.

Said Special Permit is granted pursuant to Massachusetts General Law c. 40A § 9 which provides in pertinent part as follows: "...Zoning ordinances or by-laws shall provide that a special permit granted under this section shall lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen, from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause."

Massachusetts General Laws c. 40A, §11 provides in pertinent part as follows: "A special permit, or any extension, modification or renewal thereof, shall not take effect until a copy of the decision bearing the certification of the city or town clerk that 20 days have elapsed after the decision has been filed in the office of the city or town clerk and either that no appeal has been filed or the appeal has been filed within such time, or if it is a special permit which has been approved by reason of the failure of the permit granting authority or special permit granting authority to act thereon within the time prescribed, a copy of the application for the special permit-accompanied by the certification of the city or town clerk stating the fact that the permit granting authority or special permit granting authority failed to act within the time prescribed, and whether or not an appeal has been filed within that time, and that the grant of the application resulting from the failure to act has become final, is recorded in the registry of deeds for the county and district in which the land is located and indexed in the grantor index under the name of the owner of record or is recorded and noted on the owner's certificate of title. The person exercising rights under a duly appealed special permit does so at risk that a court will reverse the permit and that any construction performed under the permit may be ordered undone. This section shall in no event terminate or shorten the tolling, during the pendency of any appeals, of the 6 month periods provided under the second paragraph of section 6. The fee for recording or registering shall be paid by the owner or applicant."

APPEALS FROM THIS DECISION, IF ANY, SHALL BE MADE PURSUANT TO MASSACHUSETTS GENERAL LAWS CHAPTER 40A, SECTION 17, AND SHALL BE FILED WITHIN TWENTY DAYS AFTER THE DATE OF FILING OF THE NOTICE OF DECISION IN THE OFFICE OF THE CITY OR TOWN CLERK.

WALPOLE ZONING BOARD OF APPEALS


Craig W. Hiltz, Clerk

CH/am

cc:	Town Clerk	Engineering	Planning Board	Applicant
	Board of Selectmen	Building Inspector	Conservation Commission	Abutters

This decision was made on April 19, 2017 and filed with the Town Clerk on May 1, 2017.